

Tractor Company d/b/a CCS Trucking and Teamsters Local 727, International Brotherhood of Teamsters, Petitioner and Local 707, Truck Drivers, Chauffeurs, Warehousemen and Helpers Union, Petitioner. Cases 13–RC–022018 and 13–RC–067437

February 14, 2013

SUPPLEMENTAL DECISION AND
CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

The National Labor Relations Board has considered objections to an election held on November 18, 2011, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Consolidated Stipulated Election Agreement. The tally of ballots shows 4 for Petitioner Local 727, 8 for Petitioner Local 707, and 0 against representation.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings and recommendations¹ only to the extent consistent with this Supplemental Decision, and finds that a certification of representative should be issued.

Background

Following the election, the tally of ballots was 3 votes for Petitioner Local 727, 3 votes for Petitioner Local 707, and 0 votes against representation, with 6 challenged ballots. Thereafter, Petitioner Local 727 filed election objections asserting, in relevant part, that the Employer engaged in conduct affecting the results of the election by omitting the names of two employees, Brian Powell and Ken Kendal, from the *Excelsior* list. Following a hearing, the hearing officer recommended sustaining the relevant objections and setting aside the election results. In the alternative, the hearing officer recommended opening and counting the challenged ballots so that the *Excelsior* objections could be considered in light of the revised tally.

The Employer and Local 707 filed timely exceptions to the hearing officer's report. On June 18, 2012, the

Board issued an Order remanding the case to the Regional Director, with instructions to open and count the challenged ballots and, thereafter, to determine whether further proceedings were warranted in light of the revised tally and the *Excelsior* objections.

On August 18, 2012, the Regional Director opened and counted the challenged ballots and issued a revised tally of ballots: 4 votes for Local 727, 8 votes for Local 707, and 0 votes against representation. Notwithstanding the revised tally, the hearing officer issued a Supplemental Report on Objections and Challenged Ballots on September 27, 2012, recommending the direction of a second election. In doing so, the hearing officer concluded that, although the Employer's omissions of two employees from the *Excelsior* list did not have a determinative effect on the election results, the omissions sufficiently prejudiced the election so that a second election was required.

We disagree with the hearing officer's conclusion. Under *Woodman's Food Markets*, 332 NLRB 503 (2000), the Board considers several factors in determining whether an employer has substantially complied with the *Excelsior* requirements, including the percentage of voters omitted from the *Excelsior* list, the employer's reasons for omitting the voters' names, and whether the number of voters omitted constitute a determinative number of votes. In the present case, we find that the relevant *Woodman's* factors support a finding that the Employer substantially complied with the *Excelsior* requirements: the percentage of voters omitted from the list is relatively small (15.4 percent), there is no showing of bad faith on the part of the Employer, and, perhaps most importantly, the number of voters omitted from the list does not constitute a determinative number. In reaching a contrary conclusion, the hearing officer relied in part on the Board's decision in *Automatic Fire Systems*, 357 NLRB 2340 (2012), but we find that case distinguishable in two significant respects. First, the present case involves a two-union election in which all employees indicated their preference for representation and in which both unions were equally affected by the *Excelsior* list omissions. Second, there is no showing here that the Employer intentionally omitted an entire segment of its work force.

Accordingly, we reverse the hearing officer's decision, and we shall certify the election results.

¹ In our earlier Decision and Direction in this case, which issued on June 18, 2012, we adopted pro forma, in the absence of exceptions, the hearing officer's recommendations to overrule Petitioner Local 727's third and fourth objections and to overrule the challenges to the ballots of Brian Powell, James Livsey Sr., James Livsey Jr., Kyle Harris, Sergio Barajas, and Mike Rizzi.

DIRECTION

IT IS CERTIFIED that a majority of the valid ballots have been cast for Local 707, Truck Drivers, Chauffeurs, Warehousemen and Helpers Union, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time truck drivers, warehousemen, shippers and receivers employed by the Employer at its facility currently located at 3636 S. California Ave, Chicago, Illinois and 5448 W. 47th Forest View, Illinois but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.